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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,111	12/21/2001	Rodney L. Abba	KCX-490(a) (17637A)	2883

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TIMOTHY A. CASSIDY
Dority & Manning
Attorneys at Law, P.A.
P.O. Box 1449
Greenville, SC 29602

EXAMINER	
STEPHENS, JACQUELINE F	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/029,111	ABBA ET AL.	
	Examiner	Art Unit	
	Jacqueline F. Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/23/06*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/23/06 have been fully considered but they are not persuasive. Applicant argues in Chen, the percentages of composition are different between the peaks and valleys. This argument is not persuasive in that the base sheet which constructs the peaks and valleys is made of the same material and therefore, has the same percentages of composition. The fibers on the surface of the peaks is an additional material. The 'comprising' language used in the independent claims is inclusive or open-ended and does not exclude additional unrecited elements, compositional components, or steps.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As to the height of the web, Chen provides a teaching of an Overall Surface Depth of 0.2mm or *greater*, which provides a teaching of a greater web height.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. USPN 5990377.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome

by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

5. As to claims 1-3, 6, 16, 17, 19, 37, 38, and 43, Chen discloses the present invention substantially as claimed. Given the broadest reasonable interpretation, the base sheet 1 in Figure 13 comprises peaks and valleys. The base sheet 1 comprises the same material and the same percentage of composition for the peaks and valleys. The addition of the fibrous material on the peaks creates a greater density on the peaks. Chen does not specifically disclose the web height is at least 25% greater than the average caliper of the web. However, Chen does disclose a web having peaks and valleys, which are greater than the average caliper of the web. Thus, the general

conditions of the claim are disclosed. Chen discloses the depth of the elevated and depressed regions is such that it creates an absorbent web having a dry feel when wet (col. 7, lines 38-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed relationship between the web height and web caliper since where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Chen discloses a textured airlaid fibrous web comprising natural fibers, synthetic fibers, or mixtures thereof (col. 28, lines 55-67). The limitation of "the airlaid web being formed on a three-dimensional fabric under sufficient force to cause the web to conform to the surface of the fabric" is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113. The textured web includes a repeating pattern of peaks and valleys, the textured web having a height that is at least 25% greater than the average caliper of the web (Figure 13), the airlaid web is bonded together (col. 29, lines 13-15).

As to claims 4 and 5, the methods of bonding directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 7, see col. 27, lines 23-36.

As to claim 8, see col. 41, lines 43-44.

As to claims 9-13, see col. 31, lines 4-39.

As to claim 14, 15, 20, 41, 42, and 44, Chen discloses the present invention substantially as claimed. Chen does not specifically disclose the claimed heights and surface area. Chen does disclose a textured airlaid web having peaks and valleys above a base sheet for the purpose of wicking fluids. Where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform

differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

As to claim 18, see Figure 3.

As to claims 20-26, the limitations regarding the type of are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. In this case, the structure of Chen is capable of functioning as an absorbent product for a variety of uses, such as a diaper or wiper product.

As to claim 27, see col. 36, lines 7-29).

As to claims 28, 30, and 31, Chen discloses an airlaid fibrous web at least one textured surface including peak areas and valley areas, the peak areas and the valley areas forming a repeating pattern on the surface of the web (Figure 13). the airlaid web having a height that is at least 25% greater than the average caliper of the web, the web

including at least one peak area per inch in one direction of the web (col. 31, lines 4-39), the airlaid web being bonded together (col. 29, lines 13-15).

As to claim 29, the limitation of "the airlaid web being formed on a three-dimensional fabric under sufficient force to cause the web to conform to the surface of the fabric" is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 32, see col. 27, lines 23-36.

As to claims 33-36, see col. 31, lines 4-39.

As to claim 39, see col. 36, lines 7-29).

As to claim 40, see Figure 13.

As to claim 45, see col. 29, lines 30-38.

As to claim 46, Chen discloses the present invention substantially as claimed. However, Chen does not specifically the peak areas have a first density and the valley areas have a second density, the first density being at least 100% greater than the second density. However, Chen discloses varied amounts of material may be applied to the peaks, including multiple applications of different materials (col. 36, lines 57-63). The more material applied to the peaks, the greater the density in the peak area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Chen with the claimed density, since discovering an optimum value of a result effective variable involves only routine skill in the art.

As to claims 47, given the broadest reasonable interpretation, the base sheet 1 in Figure 13 comprises peaks and valleys. The base sheet 1 comprises the same material and the same percentage of composition for the peaks and valleys. The addition of the fibrous material on the peaks creates a greater density on the peaks.

Chen does not specifically disclose the web height is at least 25% greater than the average caliper of the web. However, Chen does disclose a web having peaks and valleys, which are greater than the average caliper of the web. Thus, the general conditions of the claim are disclosed. Chen discloses the depth of the elevated and depressed regions is such that it creates an absorbent web having a dry feel when wet (col. 7, lines 38-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed relationship between the web

height and web caliper since where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Chen discloses a textured airlaid fibrous web comprising natural fibers, synthetic fibers, or mixtures thereof (col. 28, lines 55-67). The limitation of "the airlaid web being formed on a three-dimensional fabric under sufficient force to cause the web to conform to the surface of the fabric" is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113. The textured web includes a repeating pattern of peaks and valleys, the textured web having a height that is at least 25% greater than the average caliper of the web (Figure 13), the web including the claimed peak areas per inch of the web (col. 31, lines 4-39), the airlaid web being bonded together (col. 29, lines 13-15), and the airlaid web having a basis weight of at least 40 gsm (col. 41, lines 43-44). Chen also teaches some hydrophobic matter is present in the valley, albeit not as much as is present in the peaks (col. 8, lines 46-57). Additionally, Figure 13 of Chen shows the base sheet also 'comprises' the peaks and underlies the hydrophobic matter. Therefore, based on the

teaching of Chen, the peaks and valleys both contain hydrophobic matter as well as hydrophilic material.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Primary Examiner
Art Unit 3761

May 15, 2006